

**FILED**

APR 25 2013

IN THE UNITED STATE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
~~WESTERN DIVISION~~  
GRENADA COUNTY

DAVID CREWS, CLERK  
BY  Deputy

Estate of Fred Dunn, deceased,  
by and through Tommie Dunn, Administrator,

Plaintiff

vs.

Civil Action No. 4:13cv081-A-U

National Heritage Realty, Inc.,

Defendant

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**NOTICE OF REMOVAL**

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**PLEASE TAKE NOTICE** that National Heritage Realty, Inc. defendant herein, by and through counsel, hereby gives notice of the removal of the above-captioned action, which is filed as Civil Action No. 2012-416WL in the Circuit Court of Grenada County, Mississippi, from said court to the United States District Court for the Northern District of Mississippi, Western Division. This Notice of Removal is filed pursuant to 28 U.S.C. §1332, 28 U.S.C. §1441, and 28 U.S.C. §1446.

**CIVIL ACTION REMOVED**

1. Civil Action No. 2012-416WL in the Circuit Court of Grenada County, Mississippi, which is styled, *Estate of Fred Dunn, deceased, by and through Tommie Dunn, Administrator versus National Heritage Realty, Inc.*, is a civil action that was filed on December 6, 2012. The Plaintiff alleges that the Defendant committed medical negligence while providing care to Fred Dunn while he was a resident at the nursing home, Grenada Health & Rehabilitation Center.

### **DIVERSITY OF CITIZENSHIP**

2. Plaintiff's Complaint alleges that the decedent was an adult resident citizen of Grenada County, Mississippi.

3. Plaintiff's Complaint further alleges, and Defendant does not content, that National Heritage Realty, Inc. is a Louisiana corporation with its principal place of business is in Georgia.

4. For diversity purposes, "a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business." 28 U.S.C. § 1332(c)(1).

5. Therefore, there is complete diversity of citizenship between the parties as defined by 28 U.S.C. § 1332.

### **FACTS AND CONTROVERSY SUPPORTING JURISDICTIONAL AMOUNT**

6. Plaintiff's Complaint (which is attached as part of **Exhibit "A"**) alleges medical negligence on the part of National Heritage Realty, Inc., and seeks compensation for decedent's physical injuries, including pneumonia, urinary tract infections, multiple falls, and poor hygiene requiring hospitalization and/or medical treatment which in turn required Mr. Dunn to incur significant hospital and medical expenses, physical pain and suffering, mental anguish, humiliation, disfigurement, loss of dignity, and loss of quality of life. Thus, the amount in controversy exceeds \$75,000.00, exclusive of costs and interest, and thus meets or exceeds the jurisdictional requirement established by 28 U.S.C. § 1332.

7. Further, state practice does not permit demand for a specific sum and therefore this case is removable even though the Plaintiff has not pleaded damages in excess of \$75,000.00, pursuant to 28 U.S.C. § 1446(c)(2). *See* MISS. CODE ANN. § 11-1-59 (prohibiting a

plaintiff from pleading the amount of damages claimed in medical malpractice actions, except to state that the damages sought exceed the jurisdictional minimum of the court in which the complaint is filed and whether the claim exceeds \$10,000.00).

8. Accordingly, this Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, in that it is a civil action between citizens of different states, wherein the amount in controversy exceeds the sum of \$75,000.00, exclusive of costs and interest. Therefore, this action may be removed to this Court pursuant to 28 U.S.C. § 1441.

#### **TIMELINESS OF REMOVAL**

9. National Heritage Realty, Inc. was served with process on March 28, 2013. Therefore, thirty days have not elapsed since the removing defendant was served with process or first became aware that federal jurisdiction exists, and therefore this defendant's removal is timely as required by 28 U.S.C. § 1446(b).

#### **COPIES OF STATE COURT PROCEEDINGS**

10. Pursuant to 28 U.S.C. §1446(a) and L.U. Civ. R. 5(b), Defendants attach hereto as **Exhibit "A"**, a true and correct copy of all process, pleadings and orders served upon these Defendants on file in Civil Action No. 2012-416WL, in the Circuit Court of Grenada County, Mississippi, which constitutes the entire state court record.

#### **NOTICE TO THE STATE COURT**

11. Defendants will immediately file with the Circuit Court of Grenada County, Mississippi, a true and correct copy of this Notice, thereby effecting removal of this action to this Court. Pursuant to 28 U.S.C. § 1446(d), no further proceedings shall be had in the Circuit Court of Grenada County, Mississippi.

**NOTICE TO PLAINTIFF**


12. Pursuant to 28 U.S.C. § 1446(d), and consistent with the Certificate of Service, the Plaintiff is being provided with a copy of this Notice of Removal.

**WHEREFORE, PREMISES CONSIDERED,** National Heritage Realty, Inc. respectfully pray that this Court will receive this Notice of Removal, place it upon the docket of this Court, and that the Circuit Court of Grenada County, Mississippi will proceed no further in this action unless and until this matter is remanded.

Respectfully submitted, this the 24<sup>th</sup> day of April, 2013.

**NATIONAL HERITAGE REALTY, INC.**

HAGWOOD ADELMAN TIPTON, PC

BY: 

CARL HAGWOOD (MSBN 2039)

M. MADISON TAYLOR (MSBN 103943)

**OF COUNSEL:**

Carl Hagwood, Esquire  
HAGWOOD ADELMAN TIPTON, PC  
540 Main Street, Suite 403  
Post Office Box 4537  
Western, Mississippi 38704-4537  
Telephone: (662) 335-5555  
Facsimile: (662) 335-5700  
Email: [chagwood@hatlawfirm.com](mailto:chagwood@hatlawfirm.com)

M. Madison Taylor, Esquire  
HAGWOOD ADELMAN TIPTON, PC  
One LeFleur's Square  
4735 Old Canton Road, Suite 108  
P. O. Box 14188  
Jackson, MS 39236  
Telephone: (601) 608-6300  
Facsimile: (601) 362-3642  
Email: [mtaylor@hatlawfirm.com](mailto:mtaylor@hatlawfirm.com)

**CERTIFICATE OF SERVICE**

I, M. Madison Taylor, do hereby certify that I have this day caused to be served via United States Mail, postage fully prepaid, a true and correct copy of the above and foregoing *Notice of Removal* to the following:

F.M. Turner, III, Esquire  
F.M. Turner, III, PLLC  
P.O. Box 15128  
Hattiesburg, MS 39404-5128  
*Attorneys for Plaintiff*

THIS the 24<sup>th</sup> day of April, 2013.

  
M. MADISON TAYLOR